

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATIE A. CLARK, <sup>1</sup>	§
	§ No. 73, 2009
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for New Castle County
ROBERT W. CLARK,	§ File No. CN04-09446
	§ Petition No. 04-36824
Petitioner Below-	§
Appellee.	§

Submitted: February 12, 2010

Decided: March 9, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 9th day of March 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) Fortunately, the extraordinary delay in this proceeding is unusual. Unfortunately for the parties, however, the Family Court did not decide this matter for over two and one-half years. During that time, the marital home went into foreclosure and the respondent-appellant, Katie A. Clark (the “Wife”), filed for personal bankruptcy.

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated February 18, 2009. Supr. Ct. R. 7(d).

(2) This is an appeal by the Wife from the Family Court's January 30, 2009 order on ancillary matters following her divorce from the petitioner-appellee, Robert W. Clark (the "Husband"). The Wife's appeal was delayed in this Court because her economic circumstances prevented her from paying for a transcript of the Family Court proceeding. This appeal proceeded when she was granted some relief in making those payments.

(3) For the reasons that follow, we conclude that this matter must be remanded to the Family Court on an expedited basis for further proceedings in accordance with this Order.

(4) The record before us reflects the following. On June 27, 2006, the Husband and the Wife appeared for a hearing in the Family Court on the ancillary matters of property division, alimony and counsel fees. Both the Husband and the Wife were represented by counsel. On July 10, 2006, Wife's attorney submitted to the Family Court a document entitled "Closing Argument," consisting of over four pages of single-spaced argument and outlining in detail all of the relevant issues, including the nature of the marital assets and marital debts and their proposed distribution according to the required statutory factors.<sup>2</sup>

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<sup>2</sup> Del. Code Ann. tit. 13, §1513.

(5) By January 2007, the Family Court still had not issued its decision. The Wife's counsel filed a motion for interim relief in the Family Court on the ground that the Husband had not been making mortgage payments and the marital home was now in foreclosure. By October 2007, the decision on ancillary matters still had not been issued. Bankruptcy counsel filed a Chapter 13 bankruptcy petition on the Wife's behalf and, in November 2007, filed a Suggestion of Bankruptcy in the Family Court. In December 2007, the Husband and the Wife signed a stipulation for relief from the bankruptcy stay, which was signed as an order by the bankruptcy judge on March 24, 2008. The order, which permitted the Family Court to rule on the matters presented at the ancillary hearing, was forwarded to the Family Court the next day.

(6) On May 22, 2008, still having received no decision from the Family Court, the Wife's attorney wrote a letter to the Family Court judge in charge of the case. In the letter, counsel stated that she would be retiring in a couple of weeks and inquired as to when the decision might be available. Counsel also noted that there had been no decision following a hearing on October 10, 2007 regarding the Husband's non-payment of alimony. The Wife also claims that she inquired about the decision on ancillary matters at a visitation hearing before the same judge in October 2008, to no avail, and

that her bankruptcy attorney also contacted the judge's office to inquire about the decision, also to no avail.

(7) On January 14, 2009, now proceeding *pro se* and still having received no decision on either the ancillary matters or the alimony issue, the Wife wrote to the Chief Justice of the Supreme Court, the Chief Judge of the Family Court and the Governor of the State of Delaware for assistance. In his letter dated January 23, 2009, the Chief Justice told the Wife that all members of the Delaware judiciary are aware that their decisions should be rendered no less than ninety days following submission. He also stated that he did not expect any further delay in receiving a decision in her case. On January 30, 2009, the Family Court issued its decision on ancillary matters. On April 14, 2009, an assistant to the Chief Judge of the Family Court responded to the Wife by letter. The assistant apologized to the Wife for the delay and stated that the Family Court judge had issued her decision shortly after being contacted by the Chief Judge.

(8) In her opening brief, the Wife presents several claims based upon the Family Court's delay in issuing its decision, which may fairly be summarized as follows: The Family Court's delay in issuing its decision prejudiced the Wife because, among other things, the Wife was forced to file for bankruptcy, was unable to take advantage of a thirty-year, fixed-term

mortgage on the marital home, and is now unable to buy out the Husband's interest in the marital home. The Wife claims that the 2006 valuation of the marital home and cars, which were relied upon by the Family Court in its decision, as well as her imputed income, are now out-of-date. She also claims that the Husband stopped paying alimony after the June 2006 hearing and received funds from the sale of a marital investment property since the date of the hearing, all of which should now be taken into account.<sup>3</sup>

(9) We have carefully reviewed the record in this matter and conclude, in light of the extraordinary circumstances presented, that this matter must be remanded to the Family Court, on an expedited basis, for an evidentiary hearing to determine if, and to what extent, the Family Court's two and one-half year delay in issuing its decision on ancillary matters has resulted in prejudice to the Wife. The Family Court shall hold the hearing and issue its decision within forty-five days from the date of this Order. Jurisdiction shall be retained.

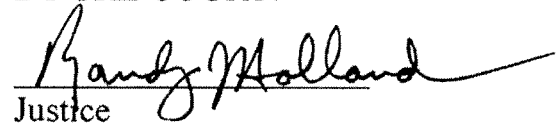
NOW, THEREFORE, IT IS ORDERED that this matter is hereby remanded to the Family Court for further proceedings in accordance

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<sup>3</sup> The Wife also claims that she should have been awarded attorney's fees.

herewith. The Chief Judge is directed to assign this matter to another judge of the Family Court. Jurisdiction is retained.<sup>4</sup>

BY THE COURT:

  
Justice

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<sup>4</sup> Supr. Ct. R. 19(c).